IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 366 of 2004

For Approval and Signature:

HONOURABLE ***MS. JUSTICE R.M. DOSHIT***

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

RAMBHAI KARSANBHAI MALAM - Opponent(s)

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Appearance :

PMR PD BHATE APP for Appellant-STATE

MR KIRTIDEV R DAVE for

MR RAHUL K DAVE for Opponent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/08/2006

ORAL JUDGMENT

This is an Appeal preferred by the prosecution under Section 378 CrPC against the judgment and order of acquittal dated 5th December, 2003 passed by the

learned Judicial Magistrate, First Class, Mangrol in Criminal Case No. 6 of 1994.

The complainant, the Food Inspector, Junagadh Circle lodged complaint against the respondent accused for commission of offence punishable under Sections 7(1) & 7(2) of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as, "***the Act***"]. According to the complainant, the accused was the owner of the provision store situated at Shil, Taluka-Mangrol. On 26th August, 1993, the accused was present at the said stores. The complainant had, with the consent of the accused, purchased a quantity of red chilly powder. The complainant sent a sample to the Public Analyst, Bhuj. The Public Analyst, Bhuj opined that the said sample of chilly powder did not conform to the standards prescribed under the Act.

The prosecution, in support of the case examined the complainant-Food Inspector and three others. The prosecution had produced on record, *inter alia*, the notification of appointment of the complainant as the Food Inspector; panch nama; report of the Public Analyst; approval accorded by the Local Health

Authority; the notice given to the accused under Section 13 (2) of the Act, etc. The learned Magistrate, having considered the evidence on record, gave the accused benefit of doubt and acquitted him. Therefore, the present Appeal.

It was the case of the complainant that after collecting the sample of the chilly powder, the same was sealed and sent to the Public Analyst for further examination. The report of the Public Analyst [*Exh.28*] indicates that the sample was received by him by a parcel in an unsealed paper box. I am of the opinion that the learned Magistrate has rightly held that the mistake of sending the sample in an unsealed paper-box was fatal to the case of the prosecution. The learned Magistrate has rightly given the accused benefit of doubt and acquitted him of the charge.

For the aforesaid reason, the Appeal is dismissed.

R & P be sent to the trial Court *forthwith*.

[Miss R.M Doshit, J.]

*Prakash**